

CGB-CC-0079

The Commissions Secretary
Office of the Secretary
Federal Communications Commission
Attn: CGB Room 3-B431

**Request for Exemption for
Eastern Outdoors TV**

RECEIVED & INSPECTED

DEC 27 2005

FCC - MAILROOM

I am requesting exemption from the closed captioning requirements on the basis of undue burden. I am sorry for the late submission of this request, but I have only been informed within the last month of my obligation to do this and was informed as recently as 12/13/05 that my program will be taken off the air effective 1/1/06 until a positive ruling on this request can be obtained. It is my belief that my program, Eastern Outdoors TV, is exempt under three of the "self-implementing" exemptions, but have been denied exemption based on these criteria at all levels. The exemptions I believe apply are as follows:

- **(8) Locally produced and distributed non-news programming with no repeat value.** Programming that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the "electronic news room" technique of captioning is unavailable.
- **(11) Captioning expense in excess of 2% of gross revenues.** No video programming provider shall be required to expend any money to caption any video programming if such expenditure would exceed 2% of the gross revenues received from that channel during the previous calendar year.
- **(12) Channels producing revenues of under \$3,000,000.** No video programming provider shall be required to expend any money to caption any channel of video programming producing annual gross revenues of less than \$3,000,000 during the previous calendar year other than the obligation to pass through video programming already captioned when received pursuant to paragraph (c) of this section

I have been told that (8) does not apply to me because my programs do run more than once and that the broadcast station is the distributor. I am the provider. The simple truth is that I would love to offer a new program every week, but do not have the budget for the staff it would require to turn around 52 programs a year.

I have been told that (11) does not apply to me because the programming provider is now suddenly the broadcast station and closed captioning for my program would not be in excess of 2% of their gross revenues. However, if I am the program provider then I believe this says I am not required to expend any money to caption any video programming if such expenditure would exceed 2% of the gross revenues received from that channel during the previous calendar year. I assure you I did not receive any funding from this channel for my programming and in fact paid them for the air time I was using. Further more, the cost of adding captioning to my program for a year will actually be nearly 75% of my gross revenue for the program in 2005 before any expenses are considered. In fact, this requirement will become the single most expensive "cost of production" (as I've been told this is) exceeding even the air time I purchase from the station.

I have been told that (12) does not apply to me because, again, I am no longer the program provider so the fact that this broadcast station has apparently cleared \$3,000,000 somehow has a bearing on my ability to afford this service.

I realize this is a request for exemption due to undue burden, but thought that maybe these "self-implementing" exemption might somehow apply and save some time and work for those with the task of determining who is and is not eligible. It just

seems obvious that this is more than a small program like mine can absorb and that these "exemptions" were specifically designed for that reason, to protect the small producer.

If these "self-implementing" exemptions truly do not apply to me, then I will now attempt to address all points of consideration needed to prove undue burden.

The nature and cost of the closed captioning for the programming.

Eastern Outdoors TV is a hometown outdoor program focusing on hunting and fishing opportunities within one days driving distance of the viewing audience. There is no set script. We basically allow an outfitter or guide service to show us what they offer and pass it along to our viewers in hopes that they might pick up the phone and schedule a trip of their own. All contact information available is already on screen including mailing address, phone number and any internet address or email the outfitter may have available. Any information about specific items or equipment, though very rare on this program, are usually placed on screen in text as well for emphasis. There are music beds and random conversation that just happens as the day progresses. Video is used to compliment as much conversation as possible. (ie. if discussing lodging provided, shots of cabins, motels and other possibilities are visually shown on screen when possible, etc.) So most of our programming is almost an infomercial for the outfitter that has invited us to their service. The cost to add closed captioning to these programs is incredible as seen by the attachments to this request labeled A1 through A5. In fact, the best price in these estimates is \$275 per episode, or \$14,300 for the year. This cost does not include shipping and handling. Keep in mind, this is the cheapest I have found with no clue at this time what quality this company produces. I assume it would be satisfactory, but do not have that guarantee at this time.

The impact on the operation of the provider or program owner

Again, I assume by provider/owner you mean me. In the "self-implementing" exemptions this could apparently mean anyone. The impact on Eastern Outdoors TV will be devastating and will probably send it falling to the wee hours of the morning that will be of little interest to advertisers or viewers. The show is currently in transition. During 2005, I was working with another individual to produce this program. Effective 12/31/05, this program will become my property alone. I'm telling you this because we were each responsible for our own sponsors with one exclusive sponsor dedicated to air time costs. So I am unaware of his financial gain in 2005 and was only entitled to profit from my allotment of available commercial positions. This amount was a potential maximum of \$21,000. His potential maximum would have been \$16,800. Again, I have no record of his earnings and it is none of my business what he charged his sponsors. Of the possible \$21,000, I actually managed to gross \$15,732.24 as seen on attachment B1 through B2. Looking ahead, sole ownership of this program will increase my potential income if I can manage the entire workload by myself. This is probably not realistic since taping the program usually requires one person to run the camera while another is being taped. Plus the time factor involved if I have to be on location at the guide service for a day or two, then in the office to edit the program for 3 or 4 days, plus handle all sales pitches for potential sponsors, maintenance for current sponsors, producing new commercials for sponsors, scheduling future trips, paying air time bills, office bills, equipment maintenance and repair and the other thousand things involved with operating a business. So, now that I am sole owner of this program, I will probably be looking at a gross revenue potential of approximately \$48,672 per year before any expenses are taken out and IF I am completely sold out for the entire year, which is unlikely. Now, after a few expenses are deducted out, we are looking at a much smaller number. For instance, my cost for air time is approximately \$12,700

per year bringing me down to \$35,972. Last year I spent \$1,453 in fuel and several hundred more in other traveling expenses. I average nearly \$1,500 in video tape and dvd's per year plus about \$400 in hunting and fishing licenses for several states. Other general office expenses include phone at nearly \$500 per year, office supplies \$200 per year, postage, etc. The nature of this program requires me to have many pieces of outdoor equipment and clothing that I have taken out of my own pocket and not even recorded as a business expense. As you can see, I am rapidly dropping below the \$30,000 mark with very conservative spending habits and no mention of video equipment upgrades and improvements to grow the program which would be in the thousands of dollars. I am currently working on a computer that is 5 years old and can't compete with what people buy on the shelves these days. I am working with a 17 gig hard drive which is unheard of for video editing and a camera that was purchased used 4 years ago and is currently unable to playback video to capture into my outdated computer. I guess you could say I have been just limping by this past year to keep this show on the air. So again, the potential financial gain for the coming year is modest at best IF I manage to be sold out year round and don't have to hire any help. Realistically, I probably will need to employ some type of assistance and probably won't be sold out for the entire year. That gross revenue amount will probably be closer to \$40,000 and deduct all mentioned expenses from there. With more conservative spending and limping by on limited equipment, I might creep a little closer to that \$20,000 in 2006 without the burden of closed captioning.

The financial resources of the provider or program owner, including efforts to solicit captioning assistance from the distributors of its programming and the distributors' responses

My financial resources are pretty well covered already. I do not have some "other" income and even if I did it would not make much sense to cut into my profits from some other income to keep another floating. As far as soliciting captioning assistance from the distributors of the programming, I have to assume you are referring to the broadcast station that airs the program. I do not have any idea of anyone else you would be referring to. I did contact WTAP (the broadcast station) and was emailed this response from Roger Sheppard, General Manager: (attachment C1)

Sent: Monday, November 28, 2005 3:38 PM

Subject: RE: Closed Captioning Assistance per FCC requirement

We might be the distributor but we don't have any way to encode non-live programming with closed-captioning.

Sorry!
Roger

As far as soliciting other businesses for the funds needed for closed captioning, I am selling 30 second commercials on the program for \$78 per week and that is higher than the broadcast station used to sell spots for during the same time slot. The cost for the closed captioning is \$275 per week. Over 3 times the cost of a full commercial. So what business or organization would be interested in just a closed captioning brought to you by mention for that kind of money? To sell it at a contribution rate would require 8 or 9 participants and would consume nearly a minute of air time just listing them. This program is not aired in some huge market

reaching millions of people. It is in about 60,000 households and attempting this type of action would seriously damage my credibility with these businesses and negatively alter the professionalism of the program.

The type of operations of the provider or program owner

I am not sure exactly what is expected here. Eastern Outdoors TV is a local, hometown outdoor hunting and fishing program airing on WTAP TV in Parkersburg, WV to about 80,000 households. It offers entertainment and potential activities that viewers can then schedule with the outfitter if a particular program interests them. I am sure many of the viewers of the program are children and Eastern Outdoors TV tries to promote safe actions and responsibility in the field while observing state and local laws. With all of the programs that spend so much time out west in Colorado, Wyoming, Texas, Canada, etc., we try to show viewers what is available not so far away. We complete the program just under the gun every week on equipment that other production companies would have very little interest in. We hope we are helping our sponsors, the outfitters that invite us to their service and the broadcast station with programming of interest to local viewers. This is the type of operation I am as best I can answer.

Any available alternatives that might constitute a reasonable substitute for the closed captioning requirements, including but not limited to, text or graphic display of the content of the audio portion of the programming

As I see it, there are three possible alternatives. (1) the open captions you suggest in this paragraph heading. (2) a picture in a picture with sign language being provided like a presidential speech. (3) an offer to send a copy of the show with minimal open captions for a fee just enough to cover the cost of the tape, packaging and shipping and handling. Options 1 and 2 will distract from the video quality and value of the show to 90% of the viewing audience if 10% is the number we are using for those who need captioning. Also, these options are really not possible with the limited equipment I have to work with. In order to get these graphics to appear, I would have to export the entire program with the graphic to make one program with both graphic and video put together. This means that I would have a full hour of video on my 17 gig hard drive. I doubt it. I'm sure this process would lock up my computer multiple times and result in ultimate failure. I do not have the amount of computer necessary for either of these two options. The third option could be the best. It would allow me to only provide this service if it is requested and I could do each segment individually thus not using so much of my computer resources at the same time. Don't get me wrong. If one person requests this video, I have lost an entire day of preparing it adding graphics, making a master, making a copy and getting it shipped. An entire day when I may need to be shooting or editing next weeks show, selling, etc. Even worse, what if 10% of my 80,000 household request this tape. I can only make 1 copy at a time. 8,000 half hour copies will be impossible for me to do in house and will require more cost and time involving a reproduction house to assist with this task. This option is not a good one and could prove to be disastrous. I know you were looking more for an alternative that I could reasonably be expected to accomplish, but the size of my operation is just not at a level to reach such a goal. I never aspired to reach this goal or had future plans to reach this goal. I was pretty satisfied just providing local programming to my community with maybe looking to another system or two close by to try and balance things financially.

Other factors the petitioner deems relevant to the Commission's final determination.

One other unfortunate drawback for me if forced to provide closed captioning will be turn around time and changes. If I am forced to move to a new station as a result of these rulings, the alternative will require my programs 7 days prior to airing. The closed captioning providers require anywhere from 4 to 15 days turn around time with an impact on the final cost of the captioning. In the interest of price, I would

need to give as much turn around time as needed for the lower costs. When finished it will take nearly an entire month before a program can be aired. If at anytime during this month a change needs to be made, I do not have the right equipment to edit a change and keep the closed captioning in place. The entire process will need to start again doubling the cost of captioning and possibly not making the air date. This will cost me the entire program worth of revenue. Or, run it as is, possibly offending a sponsor and at the very least losing one twelfth of the months revenue for an incorrect commercial. I truly believe these rulings were not intended to apply to me. The costs associated with compliance will wipe out any profit I may be experiencing. I am sure the goal of these regulations was to provide more to those with disabilities and I think that is great, but unfortunately the result in this case, and I'm sure many others, will have a different effect. Rather than helping 10%, it will probably take the program away from 100% or at least push it into the lost hours of the night. Many hearing impaired people might prefer to watch my program missing a word or a sentence here and there than to not be able to watch it at all. I do enjoy providing this service to my viewers, my sponsors, and my outfitters. While I won't say that I would never consider going to national status where this type of regulation would be more within my means, it was not the intent of the program when it started and is not in the immediate future. What I will say is that these regulations are here to improve the viewing pleasure of the public and yet somehow are causing the destruction of some of it. It seems odd to me that there is protection for companies making just shy of \$3,000,000 but my \$15,000 hangs by a thread. I have already been told that the station I air on will not honor the pending ruling exemption on the FCC web site. So effective January 1 I am off the air pending the results of this request. I am aware of 2 other local programs on WTAP. One has already called it quits as a result of these requirements. The viewers of this community have already lost one local show. The other program is a new program and I am not sure of their intent at this time, but I am assuming the community will lose this program as well even if they are in the process of applying for this exemption. Was this the desired result of these regulations?

I thank you for your time and consideration.

Mike Settle
Eastern Outdoors TV

Mike,

I just realized that my original email to you last week had bounced back because of a typo in the address.

In any case, it was a pleasure speaking with you last week.

To confirm our conversation, our price to close caption your weekly 30 minute show on mini-dv would be \$275. This price includes transcription, roll-up style captions, encoding, and conversion onto DVCPRO.

If you have any questions, or would like to schedule your show for captioning, please do not hesitate to contact me.

Regards,

Justin

Justin K. Macedonia

Video Caption Corporation

800-705-1203 (phone)

800-705-1207 (fax)

jkmacedonia@vicaps.com (email)

www.vicaps.com

Without a script, it normally costs \$350

If you do one video every week, we can do it for \$300

Dilip Som

\$At 10:20 AM 12/1/2005, you wrote:

Hello,

I produce a local outdoor television show in Parkersburg, WV. I have recently been informed that I must start providing closed captioning in January and need a quote on what this service will cost me. The show is 28 minutes and 30 seconds long. I can provide the program on miniDV or DVD and would need the show back on one of these formats or DVCpro. I only want to be FCC compliant at the best price possible so any options I have, choose the cheaper one. I do not have a set script to send to you so everything will need to be taken from the tape.

Thank you for your attention to this matter.

Mike Settle

www.easternoutdoorstv.com

Dr. Dilip K. Som

CPC

1010 Rockville Pike #306

Rockville, MD 20852

301-738-8487

800-977-6678

Cell 301-512-1295

FAX 301-738-8488

dsom@cpcweb.com

<http://www.cpcweb.com>

Mike Settle

From: "Eastern Outdoor TV Webmaster" <fern@easternoutdoorstv.com>
To: <mikesettle@easternoutdoorstv.com>
Sent: Monday, November 28, 2005 2:03 PM
Subject: Fw: Quote for Closed Captioning

--- Original Message ---

From: Custom Captions
To: mikesettle@easternoutdoorstv.com
Sent: Monday, November 28, 2005 10:34 AM
Subject: Quote for Closed Captioning

Mike --

Thanks for your call. Custom Captions is an approved vendor for the U. S. Department of Education. Our caption bid is as follows:

1 each 28.30 program @ \$12.00/minute \$342.00

52 series 28.30 program @ \$12.00/minute \$17,784.00

This quote would include our transcript of the program, and returning it to you on a Beta SP tape.

Please let us know if we can be of assistance.

Lice Durrant
Custom Captions
01-370-9878
customcaptions@qwest.net

Mike,

To caption your current show on a miniDV tape your cost will be \$385 (plus S&H) without a 1-year contract. If you are willing to commit to a 1-year contract your cost will be \$288.75 (plus S&H).

If you want your show on a DVCPro tape instead of a miniDV tape add an additional \$150. If you have any additional questions just let me know. Keep in mind that it takes 3-5 business days to caption each show, this does not include shipping times.

Patty Outlaw

> Hello,

>

> I produce a local outdoor television show in Parkersburg, WV. I have
> recently been informed that I must start providing closed captioning in
> January and need a quote on what this service will cost me. The show is
> 28 minutes and 30 seconds long and approximately 36 shows per year. I can
> provide the program on miniDV or DVD and would need the show back on one
> of these formats or DVCpro. I only want to be FCC compliant at the best
> price possible so any options I have, choose the cheaper one. I do not
> have a set script to send to you so everything will need to be taken from
> the tape.

>

> Thank you for your attention to this matter.

>

> Mike Settle

> www.easternoutdoorstv.com

Hi Mike:

Thanks for considering doing business with us. We are A&E approved vendor for captioning and transcription producing very high quality captioning. Please find below the quote for captioning ONE 30 min show.

Transcription \$1.50 per minute:	\$45.00
Creating a VHS dub for captioning:	\$30.00
Closed Captioning in roll up mode (\$3.00 per minute):	\$90.00
Encoded DVCPRO master:	\$120.00
TOTAL:	\$285.00

Shipping will be extra.
Turn around time would be 4 days.

Please let me know if you have any questions in regards to the quote. Looking forward to working with you.

Many thanks,

Sanjay Chabra

President

Talking Type Captions

10812 St. Paul St., Kensington, MD 20895

301-933-1900

sanjay@talkingtypecaptions.com

www.TalkingTypeCaptions.com

12/15/05

Eastern Outdoors TV
Item Profit Detail
 January 1 through December 14, 2005

Type	Date	Num	Name	Memo	Qty	Amount	Balance
Service							
Outdoor Show							
Sponsor							
Invoice	1/15/2005	95	Angler's Xstream	Outdoors Sp...	1	100.00	100.00
Invoice	1/15/2005	95	Angler's Xstream	Outdoors Sp...	1	250.00	350.00
Invoice	1/15/2005	96	Cains Outdoors	Outdoors Sp...	1	100.00	450.00
Invoice	1/15/2005	96	Cains Outdoors	Outdoors Sp...	1	250.00	700.00
Invoice	1/15/2005	97	Todd's Sporting Go...	Outdoors Sp...	1	130.00	830.00
Invoice	2/8/2005	100	Dave's Marine	Outdoors Sp...	1	350.00	1,180.00
Invoice	2/15/2005	104	Angler's Xstream	Outdoors Sp...	1	100.00	1,280.00
Invoice	2/15/2005	104	Angler's Xstream	Outdoors Sp...	1	250.00	1,530.00
Invoice	2/15/2005	105	Cains Outdoors	Outdoors Sp...	1	100.00	1,630.00
Invoice	2/15/2005	105	Cains Outdoors	Outdoors Sp...	1	250.00	1,880.00
Invoice	2/15/2005	106	Todd's Sporting Go...	Outdoors Sp...	1	130.00	2,010.00
Invoice	3/1/2005	115	Dave's Marine	Outdoors Sp...	1	350.00	2,360.00
Invoice	3/15/2005	121	Angler's Xstream	Outdoors Sp...	1	100.00	2,460.00
Invoice	3/15/2005	121	Angler's Xstream	Outdoors Sp...	1	250.00	2,710.00
Invoice	3/15/2005	122	Cains Outdoors	Outdoors Sp...	1	100.00	2,810.00
Invoice	3/15/2005	122	Cains Outdoors	Outdoors Sp...	1	250.00	3,060.00
Invoice	3/15/2005	123	Todd's Sporting Go...	Outdoors Sp...	1	130.00	3,190.00
Invoice	3/17/2005	124	Hornbecks Bait & T...	Eastern Outd...	1	350.00	3,540.00
Invoice	4/15/2005	131	Angler's Xstream	Outdoors Sp...	1	100.00	3,640.00
Invoice	4/15/2005	131	Angler's Xstream	Outdoors Sp...	1	250.00	3,890.00
Invoice	4/15/2005	132	Cains Outdoors	Outdoors Sp...	1	100.00	3,990.00
Invoice	4/15/2005	132	Cains Outdoors	Outdoors Sp...	1	250.00	4,240.00
Invoice	4/15/2005	133	Todd's Sporting Go...	Outdoors Sp...	1	100.00	4,340.00
Invoice	5/15/2005	135	Angler's Xstream	Outdoors Sp...	1	100.00	4,440.00
Invoice	5/15/2005	135	Angler's Xstream	Outdoors Sp...	1	250.00	4,690.00
Invoice	5/15/2005	136	Cains Outdoors	Outdoors Sp...	1	100.00	4,790.00
Invoice	5/15/2005	136	Cains Outdoors	Outdoors Sp...	1	250.00	5,040.00
Invoice	5/15/2005	137	Todd's Sporting Go...	Outdoors Sp...	1	130.00	5,170.00
Invoice	6/15/2005	145	Angler's Xstream	Outdoors Sp...	1	100.00	5,270.00
Invoice	6/15/2005	145	Angler's Xstream	Outdoors Sp...	1	192.31	5,462.31
Invoice	6/15/2005	146	Cains Outdoors	Outdoors Sp...	1	100.00	5,562.31
Invoice	6/15/2005	146	Cains Outdoors	Outdoors Sp...	1	192.31	5,754.62
Invoice	6/15/2005	147	Todd's Sporting Go...	Outdoors Sp...	1	130.00	5,884.62
Invoice	7/15/2005	152	Angler's Xstream	Outdoors Sp...	1	100.00	5,984.62
Invoice	7/15/2005	152	Angler's Xstream	Outdoors Sp...	1	192.31	6,176.93
Invoice	7/15/2005	153	Cains Outdoors	Outdoors Sp...	1	100.00	6,276.93
Invoice	7/15/2005	153	Cains Outdoors	Outdoors Sp...	1	192.31	6,469.24
Invoice	7/15/2005	154	Todd's Sporting Go...	Outdoors Sp...	1	130.00	6,599.24
Invoice	8/15/2005	162	Angler's Xstream	Outdoors Sp...	1	100.00	6,699.24
Invoice	8/15/2005	162	Angler's Xstream	Outdoors Sp...	1	250.00	6,949.24
Invoice	8/15/2005	163	Cains Outdoors	Outdoors Sp...	1	100.00	7,049.24
Invoice	8/15/2005	163	Cains Outdoors	Outdoors Sp...	1	250.00	7,299.24
Invoice	8/15/2005	164	Todd's Sporting Go...	Outdoors Sp...	1	130.00	7,429.24
Invoice	9/8/2005	175	Danser Inc.	Package A: ...	3	624.00	8,053.24
Invoice	9/15/2005	176	Angler's Xstream	Outdoors Sp...	1	100.00	8,153.24

12/15/05

Eastern Outdoors TV
Item Profit Detail
January 1 through December 14, 2005

Type	Date	Num	Name	Memo	Qty	Amount	Balance
Invoice	9/15/2005	176	Angler's Xstream	Outdoors Sp...	1	250.00	8,403.24
Invoice	9/15/2005	177	Cains Outdoors	Outdoors Sp...	1	100.00	8,503.24
Invoice	9/15/2005	177	Cains Outdoors	Outdoors Sp...	1	250.00	8,753.24
Invoice	9/15/2005	178	Todd's Sporting Go...	Outdoors Sp...	1	130.00	8,883.24
Invoice	9/21/2005	180	Danser Inc.	30 second pa...	1	390.00	9,273.24
Invoice	9/26/2005	182	Healthbridge Imaging	Outdoors Sp...	1	429.00	9,702.24
Invoice	10/7/2005	185	Danser Inc.	Outdoors Sp...	12	4,056.00	13,758.24
Invoice	10/15/2005	189	Angler's Xstream	Outdoors Sp...	1	100.00	13,858.24
Invoice	10/15/2005	189	Angler's Xstream	Outdoors Sp...	1	250.00	14,108.24
Invoice	10/15/2005	190	Cains Outdoors	Outdoors Sp...	1	100.00	14,208.24
Invoice	10/15/2005	190	Cains Outdoors	Outdoors Sp...	1	250.00	14,458.24
Invoice	10/15/2005	191	Todd's Sporting Go...	Outdoors Sp...	1	130.00	14,588.24
Invoice	11/15/2005	197	Angler's Xstream	Outdoors Sp...	1	338.00	14,926.24
Invoice	11/15/2005	198	Cains Outdoors	Outdoors Sp...	1	338.00	15,264.24
Invoice	11/15/2005	200	Todd's Sporting Go...	Outdoors Sp...	1	130.00	15,394.24
Invoice	11/15/2005	212	DigiSat	Outdoors Sp...	1	338.00	15,732.24
Total Sponsor						15,732.24	15,732.24
Total Outdoor Show						15,732.24	15,732.24
Total Service						15,732.24	15,732.24
TOTAL						15,732.24	15,732.24

B-2

----- Original Message -----

From: Roger Sheppard

To: 'Dirk Kreiss'

Sent: Monday, November 28, 2005 3:38 PM

Subject: RE: Closed Captioning Assistance per FCC requirements

We might be the distributor but we don't have any way to encode non-live programming with closed-captioning.

Sorry!

Roger

From: Dirk Kreiss [<mailto:nationalsales@wtap.com>]

Sent: Monday, November 28, 2005 2:09 PM

To: Sheppard, Roger VP and GM

Subject: Fw: Closed Captioning Assistance per FCC requirements

Roger,

Would we be considered the "distributor" of this program?

Dirk

C-1